

CALIFORNIA STATE PERSONNEL BOARD

Date of Issue: August 1, 1990

MEMO TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS

SUBJECT: Refusing to Appoint a Person Who Has Accepted an Offer of a Position

On occasion, after an individual has accepted an offer of appointment, something is discovered or occurs prior to the agreed upon start date that makes the appointment impractical or illegal. Before a decision not to appoint the individual is made, the appointing power or his or her designee should consult with the departmental personnel analyst in the Affirmative Action and Merit Oversight Division (AAMOD). Consideration must be given to what, if any, actions the person took (e.g., quit a job) as a result of relying on the offer, as well as the circumstances that make the appointment impractical, before deciding upon a course of action. In addition, the affected individual should be notified as soon as possible that there is a problem in order that he/she may take, or refrain from taking, actions in order to minimize the impact of a decision not to appoint. The purpose of this memo is to identify the considerations in resolving these situations and offer suggestions that will avoid or mitigate them.

Many things could happen between the time an offer of appointment has been accepted and the agreed upon start date which might warrant not appointing the individual. The following are some examples:

1. The Governor imposes a hiring freeze.
2. A person with a mandatory right of return to the class of appointment must be reinstated and there are no other vacancies in the class.
3. The person who made the offer failed to obtain required approvals from the departmental Civil Rights, Budget, and/or Personnel Offices.
4. Information about the offeree is discovered that indicates that he/she is unsuited for the position.
5. It is discovered that the offeree does not have the required civil service eligibility (e.g., offeree does not possess the minimum qualifications; offeree's class, from which transfer is to occur, is not at substantially the same level as the class of intended appointment; or, offeree is not reachable on the employment list).
6. It is discovered that while the offeree possesses the

required civil service eligibility, a process required by law to be completed prior to appointment has not been completed (e.g., psychological screening or background investigation for a peace officer position).

Whether a department should refuse to appoint someone after that person has accepted an offer of a position will depend on the circumstances. The following five points should be taken into consideration prior to arriving at a decision:

1. If, after being offered a position, an individual agrees to come to work under the conditions specified in the offer and the department refuses to put the person to work, a court could conclude, based on contract law, that the department must either (a) place the person in the position; or (b) as a minimum and depending on the circumstances, compensate the person for any financial loss incurred as a result of that person's reliance on the offer.
2. If, prior to the person's entering upon the duties, it is found that the person does not have the required civil service eligibility, a department is not obligated or permitted by law to appoint the person but, as noted above, might be liable for any financial loss incurred as a result of the person's reliance on the offer. In response to an appeal from an individual or a request from a department, in cases of extreme hardship or equity, the five-member Personnel Board has authorized an appointment when an individual does not possess all of the required civil service eligibility.
3. If, prior to the person's entering upon the duties, it is found that the position is not lawfully authorized (e.g., not in the budget), the State might not be obligated or permitted by law to appoint the person. Whether a position is lawfully authorized requires an examination of the applicable statutory or regulatory constraints. If it is clear from these constraints that an appointment would be in violation of law, the department is not permitted by law to appoint the person but again might be liable for any financial loss incurred as a result of the person's reliance on the offer.
4. It may be appropriate for departments to refuse to appoint an offeree prior to the person entering upon the duties when such refusal is clearly in the best interest of the State. For example: (1) the person is not acceptable, based on substantial newly acquired information; (2) the person who made the offer was not authorized to do so and appropriate approvals are denied for significant reasons; or (3) required hiring clearances, such as from the Civil Rights Office, were

not obtained and are withheld for significant reasons. However, refusal to appoint someone for such reasons could be overturned in court. For example, in the case of an offer by an unauthorized person, a court could consider whether the offeree reasonably could believe that the offer was legitimate. If, based on such reasonable belief, the offeree acted in reliance on the offer to his/her detriment, a court, as a remedy, could order the appointment or, as a minimum, order compensation for the financial loss.

5. Every effort should be made by a department to provide a remedy, up to and including an appointment, that mitigates the severity of any hardship that might have been incurred as a result of the person's reliance on the offer. However, as noted above, if it has been determined that the person does not have the required civil service eligibility, appointment of the person can be accomplished only through authorization by the five-member Personnel Board. Such authorization will be provided only in cases of extreme hardship.

The best way to prevent problems of the type discussed in this memo is through the use of effective departmental appointment policies and procedures. As a minimum, these procedures should include the following:

1. An identification of the approvals that are required before a job offer can be made (e.g., Personnel and Budget Offices).
2. An emphasis on the need to make offers contingent on medical approval and any other required approvals or processes (e.g., background investigations for peace officer positions) that do not occur prior to the offer.
3. An explanation of the DFEH regulations concerning pre-employment inquiries with emphasis on questions concerning an individual's physical or medical condition (Section 7294.0).
4. A requirement that a decision not to appoint an individual who has accepted an offer of employment be communicated to the individual at the earliest possible time so that any potential losses or problems can be mitigated.
5. A requirement that the hiring procedures be communicated directly to those individuals with responsibility for filling vacancies.

Regardless of whether appointment documents have been processed or all the necessary approvals have occurred, an appointment

occurs when an individual enters upon the duties following an offer and acceptance. That person has an appointment and can not be involuntarily removed from that appointment except by those means provided by law (e.g., adverse action, rejection from probation, layoff, medical termination, etc.). This includes appointments where it is discovered that the person does not have the required civil service eligibility; such appointments can be terminated (voided) only through Personnel Board staff action.

If you have any questions about this memorandum, please contact your departmental AAMOD analyst.

/s/  
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